

operator services. Varner Aff. ¶¶ 129, 136; Milner Reply Aff. ¶ 28. Accordingly, the Commission should explicitly and unequivocally find that BellSouth has met the requirements of section 271(c)(2)(B)(vii).

8. *White Pages Directory Listings for CLEC Customers*

BellSouth provides White Pages directory listings for the customers of competing CLECs, regardless of whether they are customers of resellers or facilities-based carriers. See Varner Aff. ¶¶ 144-149. CLEC subscribers are not separately classified or otherwise identified, and their listings are accorded the same level of confidentiality as the listings of BellSouth customers. Id. ¶¶ 144-45. The Louisiana PSC found that BellSouth satisfies this checklist requirement.

MCI claims that BellSouth “has set up an unreasonable policy” whereby CLECs must request that their customers be listed in BellSouth’s directories after service is transferred from BellSouth to the CLEC. MCI at 68. Although MCI argues that database listings should remain unchanged when the end user changes local carriers, the Act contains no such requirement. Moreover, any such requirement would not be sensible. Upon notifying BellSouth that a customer has decided to change carriers, the CLEC simply informs BellSouth that the customer wishes (or does not wish) to be listed in various directories. This protects the accuracy of the directory database by ensuring that the customer has not changed carriers in conjunction with another change (such as a change of address) that would affect his or her directory listing. The fact that only MCI questions BellSouth’s procedure suggests the legitimacy of BellSouth’s concern for database accuracy and how minor a burden the CLECs face.

Finally, the Association of Directory Publishers, a trade organization that represents entities that primarily sell yellow pages classified advertising, contends that BellSouth has failed to comply with section 222(e) of the Act, and that BellSouth's rates for directory listings are unreasonable and discriminatory against directory publishers. ADP Comments at 2. As a factual matter, BellSouth's tariffs for directory listing products have been approved by State commissions. Varner Reply Aff. ¶ 15. Moreover, the Florida PSC specifically rejected claims that BellSouth's policies violate section 222(e). Id.

BellSouth will arrange with its directory publisher to make available to any CLEC, for its subscribers, White Pages directory listings on rates, terms and conditions no less favorable than those provided to BellSouth's subscribers.

9. *Access to Telephone Numbers.*

As required by section 271(c)(2)(B)(ix), BellSouth has provided CLECs with nondiscriminatory access to telephone numbers for assignment to their customers until telecommunications numbering administration guidelines, plans, or rules are established. See PrimeCo Agreement § XI.A; Sprint Spectrum Agreement § XII.A; MereTel Agreement § XII.A; Statement § IX; Varner Aff. ¶¶ 150-151; Milner Aff. ¶¶ 78-80; Compliance Order at 12.

The Louisiana PSC found that BellSouth has complied with this checklist item. Only ASCI has objected to this conclusion, offering to the Commission two incidents that it claims demonstrate that BellSouth "is not yet ready or willing to provide nondiscriminatory access to telephone numbers as required by the checklist." ACSI Comments at 33. These two incidents are the sum total of the evidence that ACSI offers in support of this sweeping claim, but it argues

that they “typify the experience that ACSI has had with BellSouth across its region in implementing resale orders.” ACSI Comments at 35.

If these two incidents were in fact typical of BellSouth’s ability to provide nondiscriminatory access to telephone numbers, as ACSI claims, it stands to reason that other CLECs would have raised this problem with the Commission (they have not), and that ACSI itself would have filed a complaint with the Louisiana PSC (it has not). The Commission should not credit unverified allegations that are contrary to the experience of all other CLECs, especially when these allegations consist of a number of incidents so small that even if accepted as true, they do not even constitute a pattern. If there is any conclusion to be drawn by the Commission from these two incidents, it is that the Commission should expressly recognize that there can be no “perfect” checklist requirement.

10. Databases and Associated Signaling.

Contrary to MCI’s contentions, see MCI’s Henry ¶ 47, BellSouth has demonstrated that it offers nondiscriminatory access to call-related databases and related signaling. As BellSouth has noted, see BellSouth Br. at 49-50, CLECs have successfully launched millions of queries to BellSouth’s call-related databases. Milner Aff. ¶ 101. This empirical evidence clearly satisfies BellSouth’s burden with respect to this checklist requirement. See Milner Reply Aff. ¶ 31.

MCI’s more specific allegations are equally unfounded. While MCI objects that BellSouth does not make SS7 signaling available for automatic call return, MCI’s Henry ¶ 27, that is because call return does not use SS7 functionality. Milner Aff. ¶ 85; Milner Reply Aff. ¶¶ 32-33. MCI’s claim that BellSouth is improperly failing to provide Feature Group D access to

the 800 database, and requires use of SS7 access, see MCI's Henry ¶¶ 27-28, is similarly inaccurate. Milner Aff. ¶¶ 94-96; Milner Reply Aff. ¶¶ 33-35. One of the three different types of access to its toll free database affords access even to those CLECs whose switches are not capable of supporting SS7 protocols. Milner Reply Aff. ¶¶ 33-35. The other two options are available for CLECs whose SS7-capable switches can attach to BellSouth's or a third party's, Signal Transfer Points. Id. Moreover, despite MCI's claims to the contrary, a CLEC can use Feature Group D to access the 800 database. Id. ¶¶ 34-35. As it happens, however, BellSouth has not received a single request for 800 database access from a CLEC whose switches do not support the SS7 protocol. Id. ¶ 33. With respect to this checklist item as well, the CLECs have sought to create hypothetical issues where there are no real-world problems. The Commission therefore should confirm BellSouth's compliance with this checklist element.

11. Number Portability.

BellSouth has demonstrated and the Louisiana PSC has confirmed, that BellSouth satisfies the checklist's number portability requirements. See BellSouth Br. at 62-63; Louisiana PSC at 17-18. Cox suggests that the State commission could not properly have found BellSouth to be in compliance with this checklist item, Cox at 10-12, but that is plainly incorrect. As the Louisiana PSC noted, State regulations require interim number portability and BellSouth's Statement is consistent with that requirement. Louisiana PSC at 17-18. Moreover, BellSouth has successfully ported over 18,300 business numbers and 30 residential numbers region-wide. Milner Aff. ¶ 106. Although opponents make vague accusations and raise isolated problems, see ACSI at 28-32; MCI at 69-70; Sprint's Closz at ¶¶ 70-89, they provide no evidence that would

rebut BellSouth's showing that the problems experienced by some CLECs were cured by BellSouth in early 1997. Milner Aff. ¶¶ 46-50, 108-09; Milner Reply Aff. ¶¶ 10, 13-14.

MCI argues that even if BellSouth does successfully port numbers and thereby enable CLECs to compete, "BellSouth makes no commitment" in the Statement to coordinate loop cut overs and number portability. MCI at 66. This is inaccurate. The Statement commits BellSouth to "provide number portability to CLECs and their customers with minimum impairment of functionality, quality, reliability, and convenience." Statement § XI.B. In order to avoid impairing service, BellSouth coordinates loop cut overs with interim number portability. See Milner Aff. ¶ 104 & Ex. WKM-9; Milner Reply Aff. ¶ 13 ("As explained in paragraph 50 of my original affidavit, BellSouth has . . . provid[ed] special training to BellSouth's technicians who" coordinate interim number portability and cut overs and has created "an on-line reminder that informs the BellSouth technician of the critical nature of the . . . translation and requests the technician to positively affirm" that he is following protocol).

MCI also contends BST has not demonstrated it can implement number portability according to schedule. MCI at 69-70. But as BellSouth indicated in its Application, it is working to implement a permanent approach to interim portability consistent with the standards set by the Louisiana PSC, this Commission, and industry fora. BellSouth Br. at 63; Milner Aff. ¶ 111 & Exs. WKM-6 & WKM-7; Statement § XI.F. These efforts are proceeding on schedule, and BellSouth fully anticipates it will be able to implement number portability according to schedule. See Milner Reply Aff. ¶ 36. MCI is wrong to assert that simply because a complicated process has led to schedule revisions BellSouth will not meet the March 31, 1998, deadline.

MCI's Henry ¶ 54. BellSouth's revised schedule falls within the required timeframe and BellSouth is working diligently to meet its deadline. Id.

12. Local Dialing Parity.

The Act requires BellSouth to provide CLECs with nondiscriminatory access to services and information that are necessary to allow local dialing parity in accordance with section 251(b)(3). 47 U.S.C. § 271(c)(2)(B)(xii). BellSouth has complied with this requirement, as the Louisiana PSC concluded. Louisiana PSC at 18. No commenter disputes this. Therefore, the Commission should make an explicit finding that BellSouth has satisfied checklist item (xi).

13. Reciprocal Compensation.

BellSouth's reciprocal compensation arrangements satisfy checklist item (xiii). See BellSouth Br. at 64; Louisiana PSC at 18-19. The principal attack on BellSouth's satisfaction of this checklist requirement concerns, not compensation for local traffic at all, but rather traffic carried to enhanced service providers ("ESPs"), for which compensation is not due because the traffic is not "local." See Varner Aff. ¶¶ 179-180.

CLECs evidently are marketing their services to ESPs, such as Internet service providers, in the hope of receiving additional revenues from the incumbent LECs for the high volumes of traffic delivered to those ESPs. As a result, not only is BellSouth incurring the investment to upgrade its facilities to absorb the increased Internet traffic, but it also is receiving demands from CLECs to be compensated for this traffic.

No such compensation is due. The Act's reciprocal compensation requirements apply only to local traffic. Local Interconnection Order, 11 FCC Rcd at 16013, ¶ 1034; Varner Aff.

¶¶ 179-180. Under settled Commission precedent, the jurisdictional nature of traffic is determined by the end-to-end nature of the call. See Memorandum Opinion and Order, Long Distance/USA v. Bell Tel. Co. of Pennsylvania, 10 FCC Rcd 1634, 1637-38, ¶ 13 (1995) (the “end-to-end nature of the communications [is] more significant than the facilities used to complete [it] . . . [and] a single interstate communication that does not become two communications because it passes through intermediate switching facilities.”).³⁸ Calls to ESPs, which are generally converted into interLATA data transmissions, are thus properly classified as interLATA calls. Indeed, the Commission has already concluded as much. See Notice of Proposed Rulemaking, Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers, 2 FCC Rcd 4305, 4306, ¶ 7 (1987) (ESPs, “like facilities-based interexchange carriers and resellers, use the local network to provide interstate services”). Accordingly, calls to ESPs are properly considered interLATA traffic not subject to reciprocal compensation.

As opponents such as WorldCom note, moreover, this issue is already before the Commission in a separate proceeding initiated by ALTS. See WorldCom at 31-32 & n. 18. BellSouth will of course be subject to any decision the Commission reaches in that proceeding.

³⁸ The D.C. Circuit made this clear in analyzing how MCI originally provided long distance service. As the court explained, an MCI subscriber “could enter the MCI network from any local phone . . . and, after entering a subscriber authorization code, dial an ordinary long-distance number.” National Ass’n of Regulatory Util. Comm’rs v. FCC, 737 F.2d 1095, 1106 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985) The call would then travel over MCI’s “nationwide network of intercity private lines,” id., before reentering a local network at the receiving end.

It is neither necessary, nor appropriate, nor workable, to use section 271 proceedings to resolve every outstanding issue under the 1996 Act.

AT&T also suggests that as a practical matter it must resort to bill and keep because BellSouth cannot provide the billing and usage data necessary to collect reciprocal compensation. AT&T at 28; AT&T's Tamplin ¶¶ 28-35. BellSouth's systems are, however, adequate to ensure accurate reciprocal compensation. See Hollett Reply Aff. ¶ 6 (noting that independent telephone companies must provide BellSouth with appropriate records to provide meet-point billing records).

MCI argues that under BellSouth's Statement CLECs using "ring" technology will not receive adequate compensation. MCI at 67; MCI's Henry ¶¶ 57-58. This is another pricing issue for the Louisiana PSC to decide. MCI, moreover, is free to negotiate individual arrangements that reflect the specific characteristics of its network — although the suggestion that carriers should be compensated for the cost of tandem interconnection when tandem interconnection is not provided is preposterous. Varner Reply Aff. ¶ 20.

Suggestions that BellSouth has not complied with its obligation to pay "reciprocal compensation" to CMRS providers are incorrect. See generally Comments of the Paging and Narrowband PCS Alliance of the Personal Communications Industry Association ("PNPA"); see also WorldCom at 29-34; KMC at 15-18; ALTS at 24-25; Cox at 3-8. This Commission has concluded that the 1996 Act precludes BellSouth or any other incumbent LEC from charging CMRS providers for terminating LEC-originated traffic. Local Interconnection Order, 11 FCC Rcd at 16016, ¶ 1042. Accordingly, the Commission determined that incumbent LECs may not

charge CMRS providers originating access charges for use of the incumbent's network. Id. As the attachments to the PNPA filing themselves reveal, BellSouth does not charge such originating access charges to CMRS providers. PNPA App. A at 3 (letter from David M. Falgoust to Frederick M. Joyce, Dec. 11, 1996). Accordingly, BellSouth has no such charges to "cease," and is in full compliance with this Commission's rules and regulations. Varner Reply Aff. ¶ 19.

PNPA nevertheless complains that "BellSouth continues to charge paging providers in Louisiana for the facilities used to transport BellSouth-originated traffic." PNPA at 4-5 (emphasis omitted). This Commission's regulations do not require BellSouth to provide all PCNA members with free interconnection and transport facilities. See Local Interconnection Order, 11 FCC Rcd at 16013-18, ¶¶ 1033-1045. Moreover, the PNPA fails to recognize that this Commission's rules under sections 251 and 252 "have direct effect only in the context of the state-run arbitrations." Iowa Utils. Bd., 120 F.3d at 793 n.9. Paging providers have not requested interconnection in Louisiana, see Varner Reply Aff. ¶ 19, and thus they could not possibly benefit from any supposed Commission exception from the duty of paying tariffed rates for interconnection and transport facilities.

14. Resale.

No party questions that the Louisiana PSC's 20.72 percent resale discount satisfies the Act's requirements. Yet, CLECs nonetheless challenge BellSouth's compliance with checklist item (xiv) by making vague allegations of isolated mishaps. These opponents ignore BellSouth's actual performance data showing nondiscriminatory treatment of CLECs. BellSouth has filled

more than 8,000 CLEC resale orders in Louisiana and over 175,000 orders in its region. See BellSouth Br. at 65 (citing Milner Aff. ¶ 118). BellSouth's data reveal that CLECs receive nondiscriminatory resale services: Of 28 measures, 21 show that CLECs receive the same level of service as BellSouth's retail customers or (more often) a superior level of service; disparities are minimal for the remaining 7 measures. See BellSouth Br. at 73-74; Stacy Performance Aff. ¶¶ 40-41.

ACSI nonetheless claims that BellSouth disfavors ACSI with respect to due dates. ACSI bases this conclusion on just two isolated examples in which BellSouth allegedly delayed filling an order. ACSI at 32-35. ALTS's accusations are even less responsible, consisting of claims of "[u]nduly long installation periods for . . . resold services" without any specifics or factual support to which BellSouth might respond. See ALTS at 24.

Opponents raise only two additional objections to BellSouth's resale offerings. First, CLECs complain that BellSouth's voice messaging services are not available for resale. TRA at 24-25. These CLECs ignore that voice mail is an "information service" and does not fall within the category of retail "telecommunications services" available for resale under the Act. Compare 47 U.S.C. § 153(20) ("The term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications") with id. § 153(43), (46) (defining "telecommunications service" to mean the offering "for a fee" of "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received"). Voice messaging services consist of "centralized information

storage and retrieval" — not the transmission of information — and thus are not

"telecommunications services." Varner Reply Aff. ¶ 22.

Second, CLECs argue that they should be able to purchase BellSouth services for resale and receive a discount greater than 20.72 percent if they use their own operator services in lieu of BellSouth's. Sprint at 39-40. BellSouth provides CLECs with flexibility to compete in the way that best fits their abilities and needs. CLECs can purchase an existing BellSouth retail service for resale at the 20.72 percent discount pursuant to section 251(c)(4); or they can develop different services using BellSouth UNEs or other facilities of their own; or they can augment a resale service obtained from BellSouth with their own offerings. See, e.g., BellSouth Br. at 44 (discussing ability of CLECs to use UNEs to provide telecommunications services in manner they intend). The resale provisions of the Act, however, do not entitle CLECs to purchase customized wholesale services that are not offered to BellSouth's retail customers. 47 U.S.C. § 251(c)(4)(A) (resale obligation applies to "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers"). Nor may a carrier obtain a special rate on resale services based upon its plan for marketing those resale services. See 47 U.S.C. § 252(d)(3) (discount rate based upon the rate charged to incumbent's retail subscribers).

IV. BELLSOUTH WILL COMPLY WITH SECTION 272

BellSouth has also demonstrated that it will provide interLATA services in Louisiana in compliance with the requirements of section 272. BellSouth Corporation has created a separate affiliate (BellSouth Long Distance, Inc. ("BSLD")) which is operated independently of BellSouth

Telecommunications, Inc. ("BST"). All transactions and other relationships between the two companies, and their dealings with third parties, will be conducted in accordance with applicable requirements. See BellSouth Br. at 74-82.

AT&T and MCI criticize the amount of information that BellSouth has so far disclosed about BST's relationship with BSLD. AT&T at 70-75; MCI at 72-75. Ironically, their complaints are based on information obtained from BellSouth that BellSouth is not even obligated to disclose, since BellSouth has not yet received section 271 authorization. See BellSouth Br. at 76. Although the Act does not require BellSouth to satisfy the requirements of section 272 prior to receiving authorization, BellSouth has nevertheless disclosed significant information about BST and BSLD, including a summary description of all transactions between BST and BSLD, as well as a description of future services that may be provided. Jarvis Aff. ¶ 14.

While some CLECs have objected to the degree of detail contained in these summaries, the purpose of disclosure is not to provide CLECs with a blueprint of the Bell companies' business plans, but rather to provide sufficient information to monitor compliance with the nondiscrimination and accounting safeguards of the Act. See Report and Order, Implementation of the Telecommunications Act of 1996, Accounting Standards Under the Telecommunications Act of 1996, 11 FCC Rcd 17539, 17594, ¶ 123, (1996) ("Accounting Safeguards Order"). The summaries presented by BellSouth satisfy this objective for purposes of determining future compliance with section 272. They contain all material disclosures regarding transactions between BST and BSLD through August 31, 1997, the last date covered by the bills BST had

sent to BSLD as of the date of BellSouth's Application. Jarvis Aff. ¶ 14c. BellSouth has also has disclosed agreements between BST and BSLD on the Internet. They can be found at <<http://www.bellsouthcorp.com/issues/transactions>>.

The litany of more specific allegations made by MCI and AT&T are no more persuasive. MCI claims that BellSouth has improperly reassigned employees. MCI at 75-76. MCI is correct that a few employees of BellSouth who transferred to BSLD remained on BellSouth's payroll for between two and four weeks until their medical coverage, tax records, and other personnel matters could be properly transferred. MCI knows this because BellSouth has disclosed it. Jarvis Aff. ¶ 14c(9). BellSouth also has disclosed, however, that BellSouth billed BSLD for the appropriate correction at the fully distributed cost, so that BSLD gained no advantage as a result of this payroll transfer. Id. MCI offers no basis for questioning the consistency of these arrangements with the Act and the Commission's rules.

MCI also purports to be disturbed that some BSLD employees previously worked for BellSouth, suggesting that BellSouth has reassigned these employees with the intent of using them to carry "free information." BSLD hires its employees from all segments of the industry: more than half formerly worked for interexchange carriers and less than a third came to BSLD from a local telephone operating company. Jarvis Reply Aff. ¶ 7. Experience is part of what makes these employees valuable, as MCI recognizes by itself hiring former employees of BST and BSLD. BSLD's right to hire from the same talent pool as MCI and other interexchange carriers, (including BST employees) does not constitute discrimination or cross-subsidy.

MCI contends that BellSouth must “take effective steps” to ensure that former BST employees do not use their knowledge and experience to benefit BSLD. MCI at 75. According to MCI, every time an ex-BellSouth employee draws on knowledge and/or past experience to perform any function of his or her job, BSLD has an affirmative duty to disclose this event. Id. The utter unworkability of this suggestion, and the absence of any statutory support for it, illustrates the weakness of MCI’s underlying position regarding recruitment of BSLD employees.

Moreover, all BellSouth employees are bound by confidentiality requirements that constitute part of their employment. As part of their employment, BellSouth employees sign a document that in part expressly warns employees that they may not inappropriately use proprietary information. Cochran Reply Aff. ¶ 10. The BSLD Legal Department has also conducted education sessions, attended by every BSLD employee, regarding the requirements of the Act. Jarvis Reply Aff. ¶ 3.

Sprint suggests that testing of BSLD equipment — which BST has done pursuant to a disclosed contract at market prices and will do for other parties on nondiscriminatory terms, see Jarvis Aff. ¶ 14(c)(11) — is in fact a prohibited “operating, installation, or maintenance” function. Sprint at 61. However, the interoffice testing and end to end testing provided by BST are not “operating, installation, or maintenance” functions prohibited under the Commission’s rules; rather, they are commercially available testing services that are not the “‘operation, plans and day-to-day activities’” of BSLD. First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the

Communications Act of 1934, as Amended, 11 FCC Rcd 21905, 22046, ¶ 163 (1996) (“Non-Accounting Safeguards Order”).

MCI also argues that BSLD “should be compensating BST for the considerable sums that BST expended to promote the brand name, and its acknowledged failure to do so confers on it a discriminatory competitive advantage.” MCI at 77. MCI offers no support for this argument, conceding, albeit in a footnote, that the Commission has already ruled “that compensation for the value of brand names is not necessary.” *Id.* at 77 n.53. Furthermore, the BellSouth brand name does not belong to BST, as MCI suggests, but rather to BellSouth Corporation, which allows its corporate family to use its brand name. Cochran Reply Aff. ¶ 9.

AT&T objects to BST’s plan to provide joint marketing services for BSLD, claiming that BST’s suggested telemarketing practice “on its face violates the equal access requirements of section 251(g).” AT&T at 75. However, in its Non-Accounting Safeguards Order, the Commission concluded that a BOC can meet its equal access obligations, while also engaging in joint marketing authorized under section 272(g), by “inform[ing] new local exchange customers of their right to select the interLATA carrier of their choice and tak[ing] the customer’s order for the interLATA carrier the customer selects.” Non-Accounting Safeguards Order, ¶ 292. While BST must inform customers of their right to select an interLATA carrier of their choice, it does not have to force local customers that may desire BSLD’s services to listen to a complete list of carriers that offer interLATA service in their area. Such a requirement would violate BellSouth’s right to joint market, impose an unfair operational burden on BST, and inconvenience and frustrate customers. See BellSouth Br. at 79-80. If the Act’s joint marketing provision is to have

any meaning, BellSouth cannot be denied the opportunity to bring its affiliate's services to the customer's attention in a preferential fashion, nor is BellSouth's right to engage in joint marketing limited to inbound calls, as AT&T is forced to argue.³⁹ See BellSouth Br. at 79-82. Section 272(g) does not recognize a distinction between outbound and inbound joint marketing. The requirements proposed by AT&T would also raise First Amendment concerns. See BellSouth Br. at 82 n.50.

AT&T's argument that BST must force customers to listen to a list of carriers without giving any special mention to BellSouth's own service is, in fact, a microcosm of the opponents' whole approach to BellSouth's Application: They will gladly sacrifice the best interests of consumers to keep BellSouth out of long distance.

V. THE PUBLIC BENEFITS OF FULL INTERLATA COMPETITION ARE OVERWHELMING

This Commission recognized in the Michigan Order that Bell company entry into interLATA services will promote competition in that market and thereby benefit consumers. See Michigan Order ¶ 388. Market evidence such as price reductions in Connecticut puts this fact beyond good-faith dispute. BellSouth Br. at 92-94. Indeed, the comments of the Louisiana PSC (at 19-20); the views of DOJ's retained economist (DOJ's Schwartz ¶¶ 97-98);⁴⁰ and the conclusions of large users of telecommunications services and equipment manufacturers (Ad Hoc

³⁹ See AT&T at 77 ("BOCs are able to take full advantage of their joint marketing authority under § 272 for outbound calls.").

⁴⁰ Here, for a change, DOJ provides views on matters within the antitrust arena where it has expertise, and where Congress intended it to advise the Commission.

Coalition of Telecommunications Service Managers and Telecommunications Manufacturing Companies at 2-3; Ex. 2, at 12-14), all reflect consensus that BellSouth's interLATA entry will increase consumer choice, lower prices, stimulate demand, and benefit ordinary consumers and the Louisiana economy. The Department of Commerce recently confirmed that "[e]ntry by the Bell local exchange carriers into [long distance] should reduce prices and reduce the 81 percent market share now enjoyed by the big three carriers: AT&T, MCI, and Sprint."⁴¹ Additional benefits in the intraLATA toll and manufacturing markets are assured as well. See BellSouth Br. at 99.

The general argument advanced for denying the public these benefits is that extracting additional local-market concessions from BellSouth and other Bell companies, beyond satisfaction of the checklist, might bring bigger benefits in the local market. See, e.g., DOJ at 33-34. Such arguments are legally untenable, for Congress forbade the Commission from using the public interest inquiry to re-write the 1996 Act or to set its own standard of open local markets. See BellSouth Br. at 84-88. These arguments are economically unsupported, for no party has made any effort to assess the actual costs and benefits of delaying section 271 relief once the competitive checklist has been satisfied. And they are factually unfounded, because the Louisiana PSC, joining other state commissions such as the South Carolina PSC and the Oklahoma Corporation Commission, has found that Bell company in-region, interLATA entry is

⁴¹ U.S. Department of Commerce, U.S. Industry & Trade Outlook '98, at 30-8.

the surest way to promote local competition.⁴² There is no record basis for this Commission to find that the unquantified possible benefits of more nearly perfect local competition sometime in the future outweigh the certain consumer losses from further delaying BellSouth's interLATA entry in Louisiana.

Moreover, there is no guarantee that impeding interLATA competition will bring benefits of any kind to the local market, at any time.⁴³ In the near term, BellSouth will be unable to pull long distance carriers into Louisiana's local market by offering one-stop shopping to those carriers' existing customers. In the long term, it is wholly unclear that restrictions on BellSouth could change the pattern of local competition, whereby CLECs target their services to urban businesses. Local entry is being limited by CLECs' priorities and federal and state policies (such as universal service rules) that are beyond BellSouth's power to change. Nor are state regulators

⁴² See Compliance Order at 11 ("consumers in Louisiana, both local and long distance, would be well served by BellSouth's entry into the long distance market"); South Carolina PSC Compliance Order at 66 ("The Commission believes that local competition may speed up considerably upon the lowering of the barriers to BSLD competing for long distance business."); Comments of the Oklahoma Corporation Commission at 11, Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121 (filed May 1, 1997) ("[O]nce full long distance competition is opened up in Oklahoma, the major competitive providers of local exchange service will take notice and adjust their business plans to move Oklahoma closer to the top of their schedules, resulting in faster and broader local exchange competition for Oklahoma consumers.").

⁴³ Indeed, a failure to set clear, achievable standards for section 271 relief may drive Bell companies to stop trying. See Waiting For New Commissioners: Notebaert Says Ameritech Can't Follow Sec. 271 'Road Map', Communications Daily, Oct. 29, 1997, at 1-2 (Ameritech puts off long distance entry plans until "it determines whether new FCC members will have different interpretations of Telecom Act checklist requirements" because the Commission's suggested test is "impossible" to satisfy).

likely to bend to the will of this Commission on such core issues as raising rural residential rates, just because the Commission is beating BellSouth with the "stick" of section 271 authority.

A. BellSouth's Entry Will Benefit Long Distance Consumers

Drawing upon actual market experience where incumbent LECs, such as SNET and GTE, have entered the interLATA market, Professor Hausman explained in BellSouth's Application that excluding Bell companies from long distance deprives residential consumers of \$7 billion in long distance savings per year. Hausman Aff. ¶¶ 5, 21-23, 24. This Commission likewise has affirmed that "BOC entry into the long distance market will further Congress' objectives of promoting competition and deregulation of telecommunications markets."⁴⁴ The Louisiana PSC specifically has found that "consumers in Louisiana, both local and long distance, would be well served by BellSouth's entry into the long distance market." Louisiana PSC at 20.

The incumbent long distance carriers — being the only parties who stand to lose from interLATA competition — are the only parties who question that granting BellSouth's Application will lower long distance prices. Indeed, their economic experts assume that there will be no price declines from BellSouth's provision of interLATA services. This failure to consider the most direct consumer effect of interLATA relief renders the incumbents' "one-sided approach" useless when determining where the public interest lies. Hausman Reply Aff. ¶ 14;

⁴⁴ Michigan Order ¶ 381; see also Oklahoma Order, 12 FCC Rcd at 8728 (Separate Statement of Chairman Reed E. Hundt) ("the entry into the long distance market by" Bell companies under the Act "would promote competition and benefit consumers").

see generally id. ¶¶ 6-8, 9-13; 14-15 (discussing AT&T, MCI, and Sprint testimony);

Schmalensee Reply Aff. ¶¶ 3, 7, 20, 26, 33 (same).

The interexchange carriers' economists and DOJ's Professor Schwartz (who moonlights as a representative of AT&T, see supra n.3) attempt to dispute that SNET offers rates averaging 17 percent below AT&T's.⁴⁵ To do so, they focus only on the highest volume customers, and ignore the half of AT&T's customers who do not have a discount plan, but instead pay high basic rates. See Hausman Reply Aff. ¶¶ 30, 42. AT&T argues that if a customer is willing to pay an extra \$4.95 per month it can receive a rate of 10 cents per minute in the evenings, as compared to SNET's 13 cents. AT&T at 97; see also MCI's Hall ¶ 195 (neglecting to mention monthly fee). But AT&T's monthly fee serves to highlight, rather than undermine, BellSouth's point: SNET has reduced prices for low-volume residential customers who cannot benefit from AT&T's monthly fees and would continue to be neglected if not for SNET's entry. See Hausman Reply Aff. ¶ 30. A residential customer who makes calls in the evening would have to make 165 minutes of calls before AT&T's 10-cent plan could rival SNET's 13-cent rate. See id. ¶¶ 30-31. Likewise, MCI limits its 12-cent per minute plan to charges over \$15 per month. Id. ¶ 31.

The Big Three carriers can offer no evidence to rebut the observed fact that prices fall when incumbent LECs enter the interLATA market.⁴⁶ Accordingly, they are forced to recycle

⁴⁵ SNET prices averaged a 24 percent discount below AT&T's standard rates, and a 10.6 percent discount below AT&T's discount plans. Hausman Aff. ¶¶ 16-18. Even AT&T's 1997 price cuts and one-rate plans were matched and bettered by SNET. Id. ¶ 19.

⁴⁶ AT&T argues that because flat rates for cellular long-distance service did not decline to 10 cents a minute following Bell company entry, general wireline long distance rates will not

speculative theories of possible discrimination or cross-subsidy that are grounded in the antitrust case against the Bell System and take almost no account of changed circumstances (such as technological advances, network changes, divestiture of the Bell companies, federal and state regulatory reforms, developments in interLATA markets, and the 1996 Act) in the intervening fifteen years.

AT&T, for example, expresses the concern that BellSouth will use local exchange revenues to subsidize its long distance business. AT&T at 84-90. In its zeal to deny the efficacy of regulation, AT&T does not bother to acknowledge that Congress and the Commission have taken extensive steps, including not only price cap regulation but also structural separation and audit requirements, to ensure that such behavior will not occur. See BellSouth Br. at 101-14. Indeed, AT&T's arguments have already been rejected; the Commission has concluded that its cost allocation and affiliate transactions rules, together with audits, tariff review, and the complaint process, "will effectively prevent predatory behavior that might result from cross-subsidization." Accounting Safeguards Order, 11 FCC Rcd at 17551, ¶ 28.

decline upon BellSouth's entry. AT&T at 99. AT&T ignores that through bundled offerings, Bell company cellular carriers have been passing through the savings of purchasing long-distance service in bulk. See, e.g., Cree Lawson, Cellular-Phone Customers to Reach Out For Less, Nashville Banner, Jan. 18, 1997, at D3 (Cellular One offers unlimited calling outside state at normal airtime rates for \$4.95 per month); <http://www.swbwireless.com/longdis.html> (SBMS packages providing up to 120 minutes of long-distance for as little as 12.5 cents per minute). AT&T also ignores the consumer savings that have arisen when Bell company cellular carriers have clustered adjoining cellular systems into regional supersystems in which all calls are charged at local rather than long-distance rates.

MCI warns the Commission about technical discrimination against unaffiliated interexchange carriers. MCI at 94. MCI never addresses express statutory prohibitions on such discrimination, interexchange carriers' monitoring capabilities, national and international standards, BellSouth's incentive to maximize access revenues, or how the sort of discrimination MCI imagines would allow BellSouth to obtain market power in the long distance business. See generally BellSouth Br. at 107-111; see also Hausman Reply Aff. ¶¶ 37-38 (discussing incentive to maximize access revenues).

AT&T asserts that once in the market, BellSouth may "engage in a classic price squeeze . . . by continuing to impose inflated charges for non-competitive exchange access." AT&T at 87. This is incorrect as a matter of economics. See Schmalensee Reply Aff. ¶¶ 35-52. More immediately, however, AT&T neglects to mention that the Commission has already considered this issue, concluding that any risk of price squeezes can be addressed through the Commission's procedures and the antitrust laws. Second Report and Order, Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, 7 Comm. Reg. (P&F) 768, ¶¶ 127-129 ("BOC Non-Dominance Order").

In the end, AT&T and MCI fall back on the claim that while misconduct by BellSouth may be readily detectable, it might not be sufficiently punished. AT&T at 88; MCI at 95.⁴⁷ The

⁴⁷ Missing the irony, MCI also observes that "[a] determined incumbent can significantly delay the onset of competition by raising numerous meritless challenges to regulatory proceedings and arbitrations." MCI at 93. That double-edged comment should give the Commission pause, as should AT&T's statement that what it fears as a result of interLATA relief — the reason why consumers should be denied immediate price reductions — is conduct that could not be distinguished from "justifiable business practice." AT&T at 88.

incumbent long distance carriers treat substantial penalties, including civil and criminal penalties and revocation of interLATA authority, in a most cavalier fashion. See BellSouth Br. at 112-14. To the extent that they worry about complainants' ability to make out a case, the Commission has already ruled that after a prima facie showing of non-compliance, the burden shifts to the Bell company to produce evidence of compliance with the conditions of entry under section 271. Non-Accounting Safeguards Order, 11 FCC Red at 22072-75, ¶¶ 345-351.

Recognizing that there is no empirical or theoretical support for the claim that BellSouth's provision of long distance service would raise consumer prices, opponents quickly turn to disputing the amount of the price drop that BellSouth's entry will bring. While opponents suggest that long distance markets are "effectively competitive [in Louisiana] today," AT&T's Hubbard & Lehr Affs. ¶ 11; MCI's Hall ¶¶ 120-181, they can only do so by ignoring lower prices in Connecticut, GTE's territory, Canada, and other areas where incumbent LECs are free to compete. See Hausman Reply Aff. ¶¶ 6-8, 17, 19, 23, 32, 38.

Even though they overlook the most relevant market experience in favor of aggregated pricing data of their own selection, the incumbents still are forced to cook the books in an effort to hide residential price increases. The Big Three's economists employ two principal devices to disguise the absence of competitive pricing for residential customers. They lump residential callers together with business customers, thereby "hid[ing] the increases in rates that residential customers have paid in recent years." Schmalensee Reply Aff. ¶ 21; see id. ¶ 9; Hausman Reply Aff. ¶ 28. In addition, they systematically overstate the significance of discount plans, see Schmalensee Reply Aff. ¶¶ 23-26, going so far as to base their claims of falling prices on the best

rates theoretically available to residential customers rather than the rates actually paid, id. ¶ 11, 25.

When corrected for these “grossly misleading” devices, id. ¶ 11, the incumbent’s own data confirm that residential prices have increased in recent years while access charges (and other costs) have fallen, leaving a large class of residential customers who are served at prices well above cost. Id. ¶¶ 5-34. Moreover, while the interexchange carrier economists depend upon discounts and flat-rate plans as their basis for asserting that prices are falling, those plans have themselves become vehicles for hidden price increases. See generally BellSouth Br. at 90. AT&T’s price “simplification” plan, announced last month, is the latest example.⁴⁸ The Telecommunications Research and Action Center and Consumers Union have “complained that new rates would result in higher charges for many customers,” particularly for shorter-distance calls. Id. The new plan adds three hours daily to the highest rate category and virtually eliminates the sharp drop in rates after 11:00 p.m. Id.

AT&T and MCI seek to deny discounts not only to low-volume customers, but also to higher-volume customers who are not price sensitive. See Hausman Reply Aff. ¶ 31 (questioning whether plans relied on by interexchange carriers in this proceeding are “widely known and used,” as their experts imply). For example, when LCI announced recently that it was moving to one-second billing, AT&T responded in trade publications that it would offer similar service when requested but would not advertise the program, and indeed had secretly been

⁴⁸ See AT&T Abandons Distance Charges, Joins MCI and Sprint in Using Per-Min. Rates, Communications Daily, Nov. 5, 1997, at 3.

willing to bill in six-second increments if the customer specifically asked and paid a monthly fee.⁴⁹ By keeping its offering a secret, AT&T is able to retain per minute billing for the vast majority of its customers. Id. It also should be noted that SNET has offered per-second billing in Connecticut for over a year and a half.⁵⁰

DOJ's Professor Schwartz accepts that lower rates as a result of section 271 relief would "improv[e] . . . customers' welfare directly" and "ultimately would be a factor in inducing incumbent IXCs to improve their own offers or speed up the penetration of their more attractive current calling plans among their customer base." Schwartz Supp. Aff. ¶ 84. However, Professor Schwartz voices concern that "an increase in BOCs' share of interLATA revenues might be achieved largely by diverting output away from IXCs not by expanding industry output." Id. ¶ 74 (emphasis in original). Consumers will only be "divert[ed]" from the incumbent carriers because a Bell company offers lower prices or higher quality, which Schwartz concedes will be the result of section 271 relief. Hausman Reply Aff. ¶ 40. Thus, Professor Schwartz's concern, articulated as DOJ's expert, reduces to a desire to save his client, AT&T, from losing market share. As Professor Hausman asks, "[d]on't consumers matter in the DOJ's calculations?" Id.⁵¹

⁴⁹ Long Distance Carriers Move Toward Per-Sec. Billing Amid Competition, Communications Daily, Dec. 4, 1997, at 2.

⁵⁰ Communications Daily, December 5, 1997, at 6.

⁵¹ In responding to Professor Hausman's criticisms of Professor Schwartz's analysis, DOJ does not explain how BellSouth will attract customers from the incumbent interexchange carriers without offering lower prices or higher quality service. Compare Hausman Reply Aff. ¶ 49 ("BOCs cannot proceed unless they offer lower prices") with DOJ App. A, at A-6 ("a BOC may